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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

ART UNIT: 3732

EXAMINER: Matthew M. Nelson

APPLICANT: James K. Garland

SERIAL NO.: 10/589,386

FILED: 06-07-2007

FOR: DENTAL MODEL TRAY AND
ASSOCIATED ARTICULATOR

DOCKET NO.: Tear Away Wall

APPEAL

BRIEF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant respectfully submits herewith an Appeal Brief in support of the appeal to the Patent Office Board of Appeals of the rejection of Claims 1-8 in the above-identified application. Applicant is a small entity, and the small entity fee of \$270.00 is being submitted herewith.

This Appeal Brief, with the submitted fee, is being sent to the Patent Office by Express Mail Label No. EH 5929 26247 US, on June 10, 2009.

DATED this 10th day of June, 2009.

Respectfully submitted,

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APPLICANT'S APPEAL BRIEF

Real Party in Interest

The real party in interest with respect to Appellant's appeal is the Applicant, James K. Garland.

Related Appeals and Interferences

There are no related appeals and interferences known to Applicant.

Status of Claims

Claims 1-8 are included in this proceedings. Those claims were amended once in response to the first Office Action.

Status of Amendments

The claims were amended in response to the first Office Action, and that amendment has been entered. The claims were amended a second time in response to the Final Rejection, and the second amendment was not entered.

Summary of the Claimed Subject Matter

The numbers in the following summary are the reference numbers used in the drawings of the patent application. Dental trays 12 and associated articulation members 13 and 14 are used in pairs. The two trays 12 are identical. Each tray 12 comprises a rigid bottom wall 16. A continuous side wall 17 extends upwardly from the perimeter of the bottom wall 16 to form an open-topped cavity which is adapted to receive the dental casting material. The trays 12 are formed integrally from a rigid polymeric material. The lower edge or perimeter of the side wall 17 is attached to the perimeter of the bottom wall 16 by a thin connector member 19 that is

formed integrally with both the lower edge or perimeter of the side wall 17 and the perimeter of the bottom wall 16. The thin connector member 19 can be easily ripped or torn apart so that the side wall 17 can readily be removed from the base wall 16 when such is desired. The thin connector member 19 is preferably formed as a plurality of spaced apart tabs 19 that are integrally formed with the side wall 17 and bottom wall 16. The tabs 19 are made relatively thin so that they are frangible and can easily be broken. The purpose of the frangible tabs 19 is to allow the side wall 17 to be ripped or torn from the bottom wall 16 after the dental casting material has hardened in the tray 12.

Once the dental casting material has hardened in the trays, the side wall 17 is ripped from the bottom wall 16 to leave the cast stone mounted on the bottom wall 16, and the side wall 17 that has been removed from the cast stone and the bottom wall is then discarded. The stone which includes the replication of the teeth of a person can then be handled in conventional fashion to form dies of the tooth or teeth for which a prosthetic is to be prepared. The dies are formed in conventional fashion by sawing down through the casting from the top of the replicated teeth to near the bottom wall 16 which is still securely secured to the bottom of the dental model.

An articulation system is provided so that occlusion of the upper and lower teeth of the replication can be achieved as is well known in the art. A preferred articulation system comprises an ell-shaped member 21 that extends from the back side edge of the bottom wall 16 of the tray 12. For this purpose, a back wall 22 is preferably formed integrally with the back side edge of the bottom wall 16 and the ell-shaped member, with the back wall 22 extending upwardly substantially perpendicular to the broad upper face of the bottom wall 16. This back

wall 22 provides structure to which the ell-shaped member 21 is firmly attached. The ell-shaped member 21 could be simply attached to the back side edge of the bottom wall 16, but it is preferable to provide the rigid, integral back wall 22 connected to both the bottom wall 16 and the ell-shaped member 21.

Issues to be Reviewed on Appeal

The issues requiring resolution are:

1. Whether rejected Claims 1-4 are unpatentable under 35 U.S.C. § 102 as being anticipated by Honstein et al. (2004/0166466).
2. Whether rejected Claim 5 is unpatentable under 35 U.S.C. § 103 as being obvious from Honstein et al. (2004/0166466).
3. Whether rejected Claims 6 and 7 are unpatentable under 35 U.S.C. § 103 as being obvious from Honstein et al. (2004/0166466) in view of Huffman (2002/0102514).
4. Whether rejected Claim 8 is unpatentable under 35 U.S.C. § 103 as being obvious from the teachings of Honstein et al. (2004/0166466) in view of Huffman (2002/0102514) and further in view of McPherson (223,157).

Argument

Issue No. 1 - Whether rejected Claims 1-4 are unpatentable under

35 U.S.C. § 102 as being anticipated by Honstein et al. (2004/0166466).

For a proper rejection of a claim or claims under 35 U.S.C. § 102, all of the elements of the claim or claims under rejection must be shown explicitly in the cited reference. It will be shown later herein that the examiner and the examiner's supervisor (applicant has come to the

conclusion that it is more the later) seems to feel that it is proper to give their (or her) interpretation of what is shown in the cited reference rather than analyzing what is explicitly shown and disclosed in the cited reference. More on that later. Let's take a look at what elements are in the claims being rejected under 35 U.S.C. § 102 and see what counterparts are or are not found in the cited reference.

Claim 1 explicitly recites (1) a substantially planar base that forms the floor of the dental model tray; (2) a side wall extending upwardly from a perimeter of said base; (3) a frangible and easily broken, thin, membrane-like connector member; (4) said connector member is formed integrally with said perimeter of said base and lower side edge of said side wall; and (5) said side wall can be torn away from said base. Now let's see what the cited reference (Honstein) shows and explicitly discloses.

The tray of the Honstein reference certainly has a planar base that forms a floor. As alluded to above, there is going to be some discussion hereinafter about interpretation that the examiner (and probably mainly by his supervisor) attempts to use to modify what the Honstein reference actually shows and discloses with reference to the floor. The examiner and his supervisor have been referred directly to the actual teachings of the cited reference, but they simply disregard or pay no attention to the actual teachings and instead attempt to modify the actual teachings by their interpretation. For now, let's look at what is actually taught by the cited Honstein reference.

The examiner and his supervisor were referred specifically to paragraphs [0085] and [0086] which are copied immediately below for the Board's convenience (as well as an attempt to get the examiner and his supervisor to read and understand the actual, real teaching of the cited

reference).

[0085] Referring now to FIGS. 1 and 3, it may be seen that base wall 42 of trough 39 in molding tray 31 has a flat upper surface 59, and includes an outer rectangular ring-shaped portion 60 which is joined to the inner wall surfaces of the front, rear, inner and outer end walls of the tray. Base wall 42 also includes a concentrically located, longitudinally elongated rectangularly-shaped center panel 61. Base wall 42 has a thickness of less than the height of tray 31, e.g., about 1/16 inch for a tray height of about 7/16 inch, and upper surface 59 of base wall 42 is located about 1/16 inch below upper peripheral edge wall 33 of the tray. Thus arranged, base wall 42 forms within a lower portion of tray 31 a relatively deep, e.g., about 3/8 inch, lower upwardly concave opening or "matrix" trough 63 which protrudes upwardly from lower peripheral face 64 of the tray.

[0086] Referring still to FIGS. 1 and 3, it may be seen that center panel 61 of base wall 42 is connected to outer rectangular ring-shaped portion 60 of the base wall by a plurality of readily breakable, or frangible members 65. Thus, as shown in FIG. 3, outer vertical wall surface 66 of base wall center panel 61 is joined to inner vertical wall surface 67 of ring-shaped portion 60 of the base wall by a plurality of thin, breakable pins 65, e.g., a pair of front and rear pins and a pair of left and right pins. In a preferred embodiment, a tray 31 is fabricated as a unitary molded plastic part, with outer surface 66 of center panel 61 angled downwardly and inwardly away from adjacent inner wall surface 67 of ring-shaped outer portion 60 of base wall 42. With this construction, pins 65 may be readily molded to have a thickness substantially less than that of center panel 61, thus enabling the pins to be readily broken and thereby permitting the center panel to be broken away and removed from tray 31. With center panel 61 thus removed from tray 31, base wall 42 of the tray has through its thickness dimension a concentrically located, longitudinally elongated rectangular-shaped aperture 69, as shown in FIG. 23.

Now, it is pointed out that paragraph [0085] quoted above specifically says that the base wall 42 of the device of the Honstein reference has a rectangularly-shaped center panel 61 and an outer rectangular ring-shaped portion 60. The center panel 61 and the ring-shaped portion 61 surrounding the center panel 60 form the base wall 42. They are the base wall 42. The outer portion 60 of base wall 42 is joined to the inner wall surfaces of the front, rear, inner and outer end walls of the tray. This ring-shaped portion 60 of base wall 42 is joined integrally and

permanently to the walls of the tray, and the walls of the tray extend upwardly from the periphery of the ring-shaped portion 60 of the base wall 42. Thus, the tray of the Honstein reference shows the side wall extending upwardly from the perimeter of the base, and thereby certainly fulfills the first and second elements as listed above for claim 1 of the present application.

Now, does the tray of the Honstein reference include the third element as listed above for claim 1 of the present application, that being a thin, membrane-like connecting member? In paragraph [0086] quoted above, it is expressly said that the center panel 61 of the base wall 42 is connected to the ring-shaped portion 60 of the base wall by a plurality of readily breakable, or frangible members 65. Thus, it is seen that, yes, the tray of the Honstein reference does include the third element as listed above for claim 1 of the present application.

But, now comes the first fatal flaw in the Honstein reference with respect to anticipating claim 1 of the present application. The fourth element listed above for claim 1 is that the connector member is formed integrally with the perimeter of the base and the lower side edges of the side walls. The first fatal flaw in the Honstein reference is that the connector members (the frangible members 65) are NOT formed integrally with the perimeter of the base 42 (actually the outer ring-shaped portion 60 of the base 42) and a lower side edge of the side walls. The tray of the Honstein reference simply does not have that fourth element as listed above for claim 1 of the present invention. The tray of the Honstein reference simply does not have a connector member that is formed integrally with the perimeter of the base and the lower side edge of the side walls. The connector members (the frangible members 65) instead connect the outer ring-shaped portion 60 of the base 42 to the inner center panel 61 of the base 42.

The center panel 61 of the base wall 42 of the tray of the Honstein reference is joined to

the ring-shaped portion 60 of the base wall 42 by the frangible members 65. The frangible connector members 65 DO NOT join the perimeter of the base wall 42 (which is actually the perimeter of the outer ring-shaped portion 60 of the base wall 42) with the lower side edge of the side walls. In fact, the perimeter of the base wall 42 (the perimeter of the ring-shaped portion 60 of the base 42) is integrally and permanently attached to the side walls of the tray. As explicitly stated in the Honstein reference, the frangible connector members 65 join the center panel 61 of the base wall 42 to the corresponding ring-shaped portion 60 of the base wall 42. The center panel 61 is joined to the ring-shaped portion 60 by the frangible connector members 65, and the center panel 61 and ring-shaped portion 60 in combination with each other form and are the base wall 42 of the tray.

This now brings us to the second fatal flaw in the Honstein reference relative to anticipating claim 1 of the present application under 35 U.S.C. § 102. The fifth element as listed above for claim 1 of the present application is that the side wall can be torn away from the base. The side walls of the tray of the Honstein reference DO NOT AND CANNOT be torn away from the base wall 42. The lower edges of the side wall of the tray of the Honstein reference are integrally and permanently attached to the periphery of the ring-shaped portion 60 of the base wall 42. It is expressly stated in paragraph [0086] as copied above that the center panel 61 is broken away and removed from the tray, and that when the center panel 61 is removed, the base wall 42 (the ring-shaped portion 60 which remains after removing center panel 61) has a rectangular-shaped aperture 69 as shown in Fig. 23.

Look at Fig. 23, it demonstrates the removal of the center panel 61 and it shows the rest of the tray including the side walls which are firmly and permanently attached to the ring-shaped

portion 60 of the tray. Looking at Fig. 23, it becomes abundantly clear that there is absolutely no way possible, none at all, of being able to tear the side walls from the tray. There is no way possible, and certainly none is suggested in the Honstein reference, for tearing away the front, rear, inner and outer end walls of the tray. The side walls of the tray of the Honstein reference CANNOT be torn away from the base wall of the tray, and there is absolutely no suggestion whatsoever in the Honstein reference of tearing the side walls of the tray away from the ring-shaped portion 60 of the base wall.

When these two completely fatal flaws to the rejection under 35 U.S.C. § 102 were brought to the examiner's attention, the examiner, apparently with approval or more likely instruction from his supervisor, stated at lines 10-6 up from the bottom of page 5 of the final rejection,

"According to the original rejection, Examiner considered the base to be the flat upper surface 59 (not the base wall 42 as applicant has seemed to have interpreted). The side walls were therefore considered to be the structure connected to the flat upper surface 59 by the membrane-like connector member (dashed line in Fig. 1)."

That brings up the interpretation that was alluded to hereinabove. That is, the interpretation that the examiner and his supervisor would put on the cited reference. It is abundantly clear that applicant has not interpreted anything. Instead applicant refers to the actual, explicit teachings, statements and words of the cited reference. There is in fact only one interpretation involved herein and that is the point blank mistaken interpretation of the examiner and his supervisor of what the base 42 of the cited reference consists of and what is the relation of the base 42 to the flat upper surface 59.

There should, in fact, be no question of interpretation. The cited reference in paragraph

[0085] says in exact, precise language,

“Referring now to FIGS. 1 and 3, it may be seen that base wall 42 of trough 39 in molding tray 31 has a flat upper surface 59, and includes an outer rectangular ring-shaped portion 60 which is joined to the inner wall surfaces of the front, rear, inner and outer end walls of the tray. Base wall 42 also includes a concentrically located, longitudinally elongated rectangularly-shaped center panel 61.”

Where is their any interpretation? The cited reference specifically states that the base wall 42 has a flat upper surface 59, and the base wall 42 includes both the outer rectangular ring-shaped portion 60 and an elongated rectangular-shaped center panel 61. The upper surface 59 covers both the outer ring-shaped portion 60 and the rectangularly-shaped center panel 61.

Further conclusive proof that applicant has not made any interpretation of what the cited reference says (and that it is actually the examiner and his supervisor making mistaken, unjustified interpretations), is shown in paragraph [0086] wherein it is stated,

“Referring still to FIGS. 1 and 3, it may be seen that center panel 61 of base wall 42 is connected to outer rectangular ring-shaped portion 60 of the base wall by a plurality of readily breakable, or frangible members 65. Thus, as shown in FIG. 3, outer vertical wall surface 66 of base wall center panel 61 is joined to inner vertical wall surface 67 of ring-shaped portion 60 of the base wall by a plurality of thin, breakable pins 65, e.g., a pair of front and rear pins and a pair of left and right pins.”

The center panel 61 of base wall 42 is connected to the outer rectangular ring-shaped portion 60 of the base wall 42 by the plurality of frangible members 65. Those frangible members 65 absolutely DO NOT connect the perimeter of the base 42 wall (that is the outer edge of the outer ring-shaped portion 60 of base wall 42) to the lower side edges of the sidewalls. And any interpretation to the contrary is simply unjustified and false.

Now, it is abundantly clear that the examiner, and apparently his supervisor, take liberty to

make further unjustified misinterpretations of the present application as well as the cited reference. The examiner stated at the end of paragraph 14 on page 5 of the final rejection that, “Applicants’ claims never spell out the structure of the base or side wall, therefore there is nothing in the claim to indicate that the side wall can’t have a ledge as is present in Honstein.” Does the examiner and his supervisor have a hard time reading and analyzing claims? The examiner and his supervisor are apparently having a hard time reading clear recitations of claim 1 including,

- (1) “planar base that forms the floor”;
- (2) “a side wall extending upwardly from a perimeter of said base”; and
- (3) “a thin, membrane-like connector member which is formed integrally with the perimeter of said base and a lower side edge of said side wall and thus connects the perimeter of said base with the lower side edge of said side wall.”

Let’s see, a planar base that forms the floor. That defines structure. A side wall extending upwardly from a perimeter of said base. By golly, that defines structure, and it limits the structure such that the side wall extends upwardly from a perimeter of the base. That completely eliminates any chance or interpretation that the side wall extends from a ledge on the side wall. Instead, the side wall extends upwardly from the perimeter of the base and does not extend upwardly from a ledge attached to the side wall.

Then further, the recitation of a connector member formed integrally with the perimeter of the base and a lower side edge of the side wall certainly defines structure. The connector member is formed integrally with the perimeter of the base and a lower side edge of the side wall. That conclusively excludes a connector member that is formed integrally with a ledge extending from a lower side edge of the side wall.

Now, further, the examiner and his supervisor are further interpreting and modifying the cited reference in saying that the side wall can have “a ledge as is present in Honstein.” As pointed out above, the side wall of the tray of the Honstein reference clearly DOES NOT have a ledge. The base wall 42 of the tray of the Honstein reference is attached directly and integrally to the lower side edges of the side walls. The base wall 42 of the tray of the Honstein reference consists of the outer ring-shaped portion 60 and a center panel 61, with the inner edges of the outer-ring shaped portion 60 of the base wall 42 being connected to the center panel 61 of the base wall 42. The outer edges of the base wall 42, that is the outer edges of the ring-shaped portion 60 of the base wall 42, is permanently attached to the lower side edges of the tray.

It is strange, and moreover completely improper, to interpret and modify a cited reference in a rejection under 35 U.S.C. § 102. The examiner and his supervisor further indulge in this improper practice in saying that the “side wall may be torn away from the base ([0012]).” This, as pointed out explicitly hereinbefore, is completely impossible. Even the paragraph referred to by the examiner and his supervisor does not even remotely support the improper interpretation that the side wall of the tray of the Honstein reference can be torn away from the base wall 42. Paragraph [0012] teaches the well know prior art practice of using such a dental tray having an internal portion of the base floor that can be separated from the outer ring-shaped portion. Die stone is cast into the trough formed by the side walls and the base floor of the tray. It is then specifically recited at lines 17-24 of paragraph [0012], that the cast is, removed from the tray by punching through a frangible base panel in the tray, forcing the cast vertically outwards from the trough. There is absolutely no suggestion in paragraph [0012] that the side wall of the tray is torn away from the base panel. The examiner and his supervisor are simply impressing their own

improper and unsupportable interpretation to say that the “side wall may be torn away from the base [0012].”

In fact, if the side walls of the tray of the Honstein reference could somehow be torn away (as conclusively shown by the Honstein reference itself, that is completely impossible), it would render the tray of that reference totally useless. Those side walls of the tray of the Honstein reference contain necessary and essential registration ribs 49 and grooves 50 which are needed for the poured model to be returned to the tray after being removed therefrom, such that the poured model and individual segments thereof which are cut from it when it is removed are returned to exact pre-existing locations within the tray. If those side walls were somehow magically torn away and removed, there would be absolutely no way of returning the poured model and individual segments cut therefrom to the tray in exact pre-existing locations within the tray. It is certainly not even obvious, let alone an anticipation, to modify a device of a reference so as to render the device TOTALLY USELESS.

It is respectfully submitted that the Patent Office cannot interpret a prior art device in such a way that would totally destroy the device for its intended use. The Examiner and his supervisor have been referred to In re Gordon, 733 F.2d 900, 902 (Fed. Cir. 1984) and In re Kramer, 925 F.2d 1479 (Fed. Cir. 1991) wherein the CAFC concluded very pointedly that it is improper to suggest modification of a device where the modification would render the device inoperable for its intended purpose.

As pointed out previously, if the side walls of the tray of the Honstein reference could somehow magically be torn away, it would render the tray totally useless. Those side walls of the tray of the Honstein reference contain necessary and essential registration ribs 49 and grooves 50

which are needed for the poured model to be returned to the tray after being removed therefrom, such that the poured model and individual segments thereof which are cut from it when it is removed are returned to exact pre-existing locations within the tray. If those side walls were torn away and removed, there would be absolutely no way of returning the poured model and individual segments cut therefrom to the tray in exact pre-existing locations within the tray. It is certainly not even obvious, let alone an anticipation, to modify a device of a reference so as to render the device TOTALLY USELESS for its intended purpose.

In Honstein, the inner portion of the base, that is, the inner area surrounded by the frangible members, is broken away from the outer portion of the base, that is, the portion of the base lying outside of those frangible members. That broken away inner portion is then used to push the poured mold upwardly out of the side walls of the tray so that the mold is removed from the tray. The mold is then sectioned into individual segments, and all the resulting segments of the mold are returned into the tray so as to be held ON THE REMAINING PORTION OF THE BASE THAT IS STILL ATTACHED TO THE SIDE WALLS, WITH THE INDIVIDUAL SEGMENTS FURTHER BEING HELD IN THEIR PROPER PLACE BY THE SIDE WALLS OF THE TRAY.

The side walls are essential for two separate reasons. First, the side walls must hold and retain the remaining portion of the base attached to them so that the remaining portion of the base will prevent the individual segments from falling completely out of the otherwise open bottom of the tray. Second, the side walls are essential in holding the individual segments in their proper space and relationship with each other when they are returned to the tray. The side walls MUST be retained to provide proper positioning of the individual segments of the mold. As pointed out

above, if the side walls were magically torn away and removed, that would render the device TOTALLY USELESS for its intended purpose.

The examiner and his supervisor have been shown in at least two responses to the rejections of claims 1-8 that it is completely impossible to tear the side wall of the tray of Honstein reference from the base wall 42. It has also been pointed out to the examiner and his supervisor in at least two responses to the rejections of claims 1-8 that even if the side wall of the Honstein reference could somehow be magically torn away from the center panel 61 of the base wall 42, doing such would completely destroy the tray for its intended purpose. In an Advisory Action mailed May 13, 2009, the examiner and his supervisor make a totally erroneous and actually dishonest statement. The examiner and his supervisor say that tearing the side wall of the Honstein reference away from the base wall 42 would “not destroy the device since the frangible members are there specifically so that the side walls may be torn away from the base.”

All the examiner and his supervisor have to do is honestly read and analyze the Honstein reference and it would be crystal clear to them that the frangible members 65 ARE NOT there specifically so that the side walls may be torn away from the base. In fact, they would find that the Honstein reference does not even remotely suggest doing the impossible thing of tearing the side wall from the base. The only, repeat only, purpose given in the Honstein reference for the frangible members 65 is to separate the center panel 61 of the base wall 42 from the remainder of the base wall 42 so THAT THE CENTER PANEL 61 CAN BE REMOVED FROM THE TRAY. The examiner and his supervisor have been apprised of this, and it is fundamentally dishonest for the examiner and his supervisor to say that “the frangible members are there specifically so that the side walls may be torn away from the base.”

Claims 2-4 are dependent on claim 1, and as has been conclusively show hereinabove, claim 1 is indeed patentable and thus claims 2-4 are allowable as being dependent upon an allowable claim.

Issue No. 2 - Whether rejected Claim 5 is unpatentable under 35 U.S.C. § 103 as being obvious from Honstein et al. (2004/0166466).

The rejection of Claim 5 as being obvious from the Honstein reference under 35 U.S.C. 103 is seen to be ludicrous in view of the arguments presented hereinbefore with respect to the rejection of claims 1-4. The Honstein reference does not even remotely suggest two of the essential elements of claim 1, upon which claim 5 is dependent. The foregoing discussion of the rejection of claims 1-4 irrefutably shows that it would conclusively and most clearly not be obvious to modify the tray of the Honstein reference such that the side walls of the tray could be torn away from the tray. As previously pointed out, it is completely impossible to be able to tear the side walls away from the tray of the Honstein reference. The tray would require modification involving repositioning the frangible members 65 from their position in which they join the center panel 61 of the base wall 42 to the outer ring-shaped portion 60 of the base wall 42 to a new position in which they joined the outer perimeter of the outer ring-shaped portion 60 of the base wall 42 to the lower side edges of the side wall of the tray (and that would require also modifying the base wall 42 so that the center panel 61 and the ring-shaped portion 60 were joined together as the base wall 42). Now, there is no suggestion whatsoever given in the Honstein reference of making such radical modifications to the tray. And, more importantly making such modifications would render the tray of the Honstein reference totally useless, and it certainly is not obvious to modify a device of a reference so as to render the device TOTALLY USELESS for its intended

purpose.

Issue No. 3 - Whether rejected Claims 6 and 7 are unpatentable under 35 U.S.C. § 103 as being obvious from Honstein et al. (2004/0166466) in view of Huffman (2002/0102514).

The rejection of Claims 6-7 as being obvious from Honstein in view of Huffman under 35 U.S.C. 103 is clearly unfounded. The Huffman reference does not remedy the glaring deficiencies of the Honstein reference as discussed above. There is no suggestion whatsoever in the Huffman reference of the two essential elements of Claim 1 as previously discussed with respect to the rejection of Claim 1 and Claim 5 from the Honstein reference. There is absolutely no suggestion in the Huffman reference of means for tearing away of the side wall of a dental tray.

Issue No. 4 - Whether rejected Claim 8 is unpatentable under 35 U.S.C. § 103 as being obvious from the teachings of Honstein et al. (2004/0166466) in view of Huffman (2002/0102514) and further in view of McPherson (223,157).

The rejection of Claim 8 as being obvious from Honstein in view of Huffman and McPherson under 35 U.S.C. 103 is respectfully traversed. The McPherson reference does not remedy the glaring deficiencies of the Honstein and Huffman references as discussed above. There is no suggestion whatsoever in the McPherson reference of the two essential elements of Claim 1 as previously discussed with respect to the rejection of Claims 1-4 and Claim 5. There is absolutely no suggestion in the McPherson reference of means for tearing away of the side wall of a dental tray.

CONCLUSION

As fully shown above, the rejections of claims 1-8 are entirely unfounded. In an Advisory Action dated May 13, 2009, the examiner and his supervisor make a statement that conclusively shows just how wrong their rejections are and just how unjustified their interpretation of the Honstein reference is. In that Action, the examiner and his supervisor repeat their completely unfounded interpretation that the side wall of Honstein may be torn away from the base wall 42 by the frangible members 65 described in paragraph [0012] of Honstein. As pointed out previously herein, this is a preposterous interpretation, and it has been conclusively shown that it is COMPLETELY IMPOSSIBLE to tear the side wall of the tray of Honstein from the base wall 42 by the frangible members 65. Further, in that Action, the examiner and his supervisor make the completely unfounded statement that their erroneous interpretation “does not destroy the device since the frangible members are there specifically so that the side walls may be torn away from the base.” As pointed out hereinabove, the frangible members 65 are there to allow the center panel 61 of the base 42 to be broken away from the ring-shaped portion 60 of the base 42, and thus be removed from the tray. There is no suggestion in any way, shape or form in Honstein that the side walls may be torn away from the base. The examiner and his supervisor are being completely dishonest in making such a statement, and this after they had been previously apprised that the statement is completely dishonest. Hopefully, this honorable Board will chastise the supervisor for such behavior. This is no way to train an examiner, teaching him to make untrue statements. In that chastisement, the honorable Board should reverse the totally irresponsible rejections and direct the examiner to issue a notice of allowance.

CLAIMS APPENDIX

1. A dental model tray that is made entirely of a polymeric material and is used in forming a dental model from casting material poured on said tray, said dental model tray comprising

a substantially planar base that forms the floor upon which dental casting material is poured in forming a dental model;

a side wall extending upwardly from a perimeter of said base so as to form a cavity having an open top facing upwardly from said base;

a thin, membrane-like connector member which is formed integrally with the perimeter of said base and a lower side edge of said side wall and thus connects the perimeter of said base with the lower side edge of said side wall, said connector member being frangible and easily broken so that said side wall can be torn away from said base and discarded after dental casting material has hardened in said cavity formed by said side wall.

2. The dental model tray in accordance with Claim 1 wherein said connector member extends continuously along the entire length of the lower edge of said side wall which is connected to the perimeter of said base.

3. The dental model tray in accordance with Claim 1 wherein said connector member is formed as a plurality of spaced apart thin tabs which interconnect said base with said lower edge of said side wall.

4. The dental model tray in accordance with Claim 3 wherein there are at least about 4 of said spaced apart thin tabs which interconnect said base with said lower edge of said side wall.

5. The dental model tray in accordance with Claim 1 wherein said dental model tray further includes an ell-shaped member that extends from a back side of said base;

said ell-shaped member comprising first and second legs that are joined together at a common juncture and extend from said juncture at an angle of substantially 90 degrees relative each other;

a distal end of said first leg of said legs being attached to said back side of said base such that said one leg extends from said base so that said one leg lies in a plane that is parallel to a planar upper surface of said base;

each of said first and second legs is formed in the shape of a flat strip having a width of about 3/8 inch to 5/8 inch and a thickness of about 3/64 inch to 5/64 inch; and

means associated with a distal end of said second leg of said ell-shaped member for removably engaging a corresponding distal end of a second leg of a mutually respective similar ell-shaped member of another mutually respective similar dental model tray so that the second legs which are so engaged at their distal ends can pivot about those engaged distal ends in a common plane containing said first and second legs of said engaged ell-shaped members.

6. The dental model tray in accordance with Claim 5 wherein means are provided for removably attaching said distal end of said first leg to said base.

7. The dental model tray in accordance with Claim 6 wherein said means for removably attaching said distal end of said first leg to said base comprises

a slide block integrally formed at said distal end of said one leg;

a back wall extending upwardly from said back side of said base;

an upwardly extending slot-like opening in said back wall of said base, said upwardly extending slot-like opening adapted to receive in snug sliding manner said slide block of said distal end of said one leg so as to firmly hold said one leg in firm engagement with said back wall

of said base.

8. The dental model tray in accordance with Claim 7 wherein a stabilizer wall extends from said common juncture of said first and second legs to a position on said block that is spaced from the intersection of said block and said first leg.